

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)		
POLICE OFFICER CEDRIC BAILEY,)		No. 12 PB 2788
STAR No. 17907, DEPARTMENT OF POLICE,)		
CITY OF CHICAGO,)		
RESPONDENT.)		(CR No. 1043651)

FINDINGS AND DECISION

On February 21, 2012, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Cedric Bailey, Star No. 17907 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 23: Failure to obey Department orders concerning other employment, occupation, or profession.

The Police Board caused a hearing on these charges against Police Officer Cedric Bailey to be had before Michael G. Berland, Hearing Officer of the Police Board, on July 16 and July 17, 2012.

Following the hearing, the members of the Police Board read and reviewed the record of proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Berland made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.

4. The Respondent, Police Officer Cedric Bailey, Star No. 17907, charged herein, is **not guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

From on or about August 18, 2010, through on or about February 19, 2011, or for some period of time therein, Officer Bailey, while on convalescent duty status with restrictions, engaged in secondary employment which required activities not permitted by his convalescent duty status with restrictions and/or inconsistent with his duty restrictions, in that he worked as a security officer for the Chicago Park District, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department .

There is no dispute that Officer Cedric Bailey was on convalescent duty status with the Chicago Police Department with work restrictions from August 18, 2010, through on or about February 19, 2011. Officer Bailey contacted the Medical Services Section after he got

pneumonia and blood clots in the lungs, and he submitted medical test results and evaluations.

Bailey's doctors stated that he could work desk duty only. (See Superintendent's Exhibits A-D.)

The Police Department's Medical Services Section then placed Bailey into convalescent duty status.

While he was on convalescent duty status, Officer Bailey worked secondary employment as a security guard for the Chicago Park District at different locations. The Superintendent alleged in this charge, and the other charges filed against Bailey, that Bailey's work as a Park District security officer violated the restriction that he be limited to desk duty jobs.

Despite Bailey's being on convalescent duty status with work restrictions, the Police Department caused him to work assignments that were inconsistent with his work restrictions on multiple occasions. The evidence at the hearing established that Bailey worked 38 times in the male lockup facility during the time period that he was on convalescent duty status. This assignment was a full-duty position and required Bailey to process prisoners, search prisoners, fingerprint prisoners, walk prisoners to the cells where they were held, and place mats in the cells for the prisoners. In addition, on at least one occasion Bailey was required to go out on patrol in a squadrol—a full-duty position—while he was on convalescent duty status.

The Medical Services Section had the responsibility to notify Bailey's Police Department superiors of his convalescent duty status, and Bailey's superiors had the responsibility to attempt to accommodate him by finding him an assignment that was consistent with his duty restrictions (see General Order 98-2-3, Section IV-A). The Superintendent introduced no evidence at the hearing to establish that the Department attempted to accommodate Bailey due his convalescent status but was unable to do so and therefore needed to assign him to full-duty positions. The

Superintendent introduced no evidence that working in the lockup or on patrol was an appropriate position for police officer who was on convalescent status and/or that the duties in the lockup or on patrol did not require the assignment of a full-duty officer.

Assigning Officer Bailey these full-duty positions also appears to be inconsistent with General Order 97-9-1, Section V-A, which provides in relevant part that during the bidding and selection process, the Department may temporarily fill a recognized duty assignment opening by assigning an officer to the opening until the recognized opening is filled. However, Section V-G of General Order 97-9-1 states that limited duty members **may not** be assigned to the lockup (emphasis in the original). Although this General Order primarily deals with officers bidding for certain jobs, it also deals with temporary assignments to the lockup, which appears to be the category that Bailey fell into while he was on convalescent duty status. This General Order also appears to constitute notice to the Department that Bailey should not have been assigned to the male lockup facility during his convalescent duty status.¹

The Police Board determines that, based on the full-duty assignments the Police Department gave Bailey while he was on convalescent duty status, assignments that were inconsistent with his work restrictions, it was not unreasonable for Bailey to assume that his secondary employment with the Chicago Park District was consistent with his convalescent duty status; hence, the Superintendent cannot now discipline Bailey for working the secondary employment security job with the Chicago Park District. There is no evidence of bad faith on the part of Bailey, nor is there any evidence that he shirked his duties with the Police Department. Quite the contrary, for he followed the Department's orders to work the lockup and the squadrol.

¹ Even if General Order 97-9-1 is not applicable to Bailey's specific situation, it is clear that assigning him to the lock up and to the squadrol was inconsistent with his work restrictions.

As a result of these orders and the work Bailey performed for the Department while he was on convalescent duty status, the Department is now estopped from seeking to discipline Bailey for his work with the Chicago Park District.

5. The Respondent, Police Officer Cedric Bailey, Star No. 17907, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

From on or about August 18, 2010, through on or about February 19, 2011, or for some period of time therein, Officer Bailey, while on convalescent duty status with restrictions, engaged in secondary employment which required activities not permitted by his convalescent duty status with restrictions and/or inconsistent with his duty restrictions, in that he worked as a security officer for the Chicago Park District, thereby violating Chicago Police Department Employee Resource directive E01-11.

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference.

6. The Respondent, Police Officer Cedric Bailey, Star No. 17907, charged herein, is **not guilty** of violating, to wit:

Rule 23: Failure to obey Department orders concerning other employment, occupation, or profession,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

From on or about August 18, 2010, through on or about February 19, 2011, or for some period of time therein, Officer Bailey, while on convalescent duty status with restrictions,

engaged in secondary employment which required activities not permitted by his convalescent duty status with restrictions and/or inconsistent with his duty restrictions, in that he worked as a security officer for the Chicago Park District, thereby failing to obey Department orders concerning other employment, occupation, or profession.

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference.

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes:

By a unanimous vote, the Board finds the Respondent not guilty of violating Rule 2.

By a unanimous vote, the Board finds the Respondent not guilty of violating Rule 6.

By a unanimous vote, the Board finds the Respondent not guilty of violating Rule 23.

As a result of the foregoing, the Police Board hereby determines that cause exists for restoring the Respondent to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective March 2, 2012.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Cedric Bailey, Star No. 17907, as a result of having been found **not guilty** of the charges in Police Board Case No. 12 PB 2788, be and hereby is **restored** to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective March 2, 2012.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 16th DAY OF AUGUST, 2012.

/s/ Demetrius E. Carney

/s/ Scott J. Davis

/s/ Melissa M. Ballate

/s/ William F. Conlon

/s/ Ghian Foreman

/s/ Rita A. Fry

/s/ Susan L. McKeever

/s/ Johnny L. Miller

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

DISSENT

The following members of the Police Board hereby dissent from the Decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THE FOREGOING COMMUNICATION

THIS ____ DAY OF _____, 2012.

SUPERINTENDENT OF POLICE